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4 UNITED STATES DISTRICT COURT

5 DISTRICT OF NEVADA

6 PANZARELLA CONSULTING, LLC, )

7 Plaintiff, )

8 vs. )

3:10-cv-00424-RCJ-RAM

9 SINGLE TOUCH INTERACTIVE, INC. et al., )

ORDER

10 Defendants. )  
11

12 This case arises out of a corporation's issuance of additional stock without maintaining  
13 Plaintiff's proportionate ownership in the corporation, in contravention of the corporation's  
14 contract with Plaintiff. Pending before the Court is Defendants' Motion to Dismiss for Lack of  
15 Jurisdiction (ECF No. 4). For the reasons given herein, the Court grants the motion. At the  
16 hearing, Plaintiff admitted a lack of jurisdiction, but the Court will memorialize its reasons for  
17 the ruling.

18 **I. FACTS AND PROCEDURAL HISTORY**

19 Plaintiff Panzarella Consulting, LLC possesses certain warrants to purchase the stock of  
20 Defendant Single Touch Interactive, Inc. ("STI")—warrants that were transferred to Plaintiff by  
21 Patrick J. Panzarella, the manager and apparent sole owner of Plaintiff. (*See* Panzarella Decl.  
22 ¶¶ 1–5, Aug. 26, 2010, ECF No. 9). Plaintiff's predecessor in interest, Patrick Panzarella,  
23 acquired these warrants as payment for consulting services he provided to STI under contract.  
24 (Compl. ¶¶ 6–8, ECF No. 1). The contract contains an "anti-dilution clause" requiring STI to  
25 maintain Plaintiff's percentage ownership in STI. (*Id.* ¶ 9; *see* Contract ¶ 6, ECF No. 1 Ex. A).

1 Plaintiff alleges that STI, through the actions of its directors, including Defendant Anthony G.  
2 Macaluso, issued additional stock to Macaluso himself, without maintaining Plaintiff's  
3 percentage ownership. (*See id.* ¶ 30). Plaintiff also alleges having been paid only \$320,000 of a  
4 promised \$350,000 cash compensation. (*See id.* ¶ 7).

5 Plaintiff sued Defendants in this Court on four causes of action: (1) Breach of Contract;  
6 (2) Quantum Meruit; (3) Fraud and Breach of Fiduciary Duty; and (4) Constructive Trust.  
7 Defendants have moved to dismiss for lack of subject matter jurisdiction.

## 8 II. LEGAL STANDARDS

9 Federal courts are of limited jurisdiction, possessing only those powers granted by the  
10 Constitution or statute. *See United States v. Marks*, 530 F.3d 799, 810 (9th Cir. 2008) (citations  
11 omitted). The party asserting federal jurisdiction bears the burden of overcoming the  
12 presumption against it. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).  
13 Federal Rule of Civil Procedure 12(b)(1) provides an affirmative defense via a motion to dismiss  
14 for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Additionally, a court may raise  
15 the question of subject matter jurisdiction sua sponte at any time during pendency of the action.  
16 *United States v. Moreno-Morillo*, 334 F.3d 819, 830 (9th Cir. 2003). "[W]hen a federal court  
17 concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its  
18 entirety." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (citing 16 J. Moore et al., *Moore's*  
19 *Federal Practice* § 106.66[1], pp. 106-88 to 106-89 (3d ed. 2005)).

20 Section 1332(a) of Title 28 creates original jurisdiction in the district courts between  
21 citizens of different states where the matter in controversy exceeds the sum or value of \$75,000.  
22 *See* 28 U.S.C. § 1332(a) and (a)(1). Although Article III of the Constitution permits Congress to  
23 create federal jurisdiction where there is minimal diversity, i.e., where any plaintiff is diverse  
24 from any defendant, *State Farm Fire & Cas. Co. v. Tashire*, 386 U.S. 523, 530-31 (1967),  
25 section 1332 requires complete diversity, i.e., every plaintiff must be diverse from every

1 defendant, *see Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 82 (2005) (citing *Strawbridge v. Curtiss*,  
2 7 U.S. 267 (1806)). For the purposes of diversity, a limited liability company is a citizen of  
3 every state of which its owners and members are citizens. *Johnson v. Columbia Props.*  
4 *Anchorage*, 437 F.3d 894, 899 (9th Cir. 2006).

### 5 III. ANALYSIS

6 Defendants argue that Plaintiff is a citizen of California because that is where its only  
7 office (and hence its principal place of business) is located, and that it is therefore not diverse  
8 with Defendants. Plaintiff is not a corporation, however, so 28 U.S.C. § 1332(c)(1), which  
9 governs the citizenship of corporations for the purposes of diversity, does not apply. As a limited  
10 liability company ("LLC"), however, Plaintiff is a citizen of every state of which its individual  
11 members and owners are citizens, *Johnson*, 437 F.3d at 899, and Defendants noted this point at  
12 the hearing. Although registered as an LLC in Wyoming, (*see* Compl. ¶ 1), Plaintiff is in fact a  
13 citizen of California for purposes of diversity, because Patrick Panzarella, the manager and sole  
14 owner of Plaintiff, (*see* Panzarella Decl. ¶¶ 1–5), is a citizen of California. The public records of  
15 the State of Wyoming show that Plaintiff is a LLC with its principal office and mailing address at  
16 3105 Walnut Ave., Manhattan Beach, CA 90266, and that Patrick Panzarella is a  
17 "Member/Manager." *See* Wyoming Secretary of State, Filing Search, [https://wyobiz.wy.gov/](https://wyobiz.wy.gov/Business/FilingDetails.aspx?FilingNum=2010-000585671)  
18 [Business/FilingDetails.aspx?FilingNum=2010-000585671](https://wyobiz.wy.gov/Business/FilingDetails.aspx?FilingNum=2010-000585671) (last visited Sept. 1, 2010). This  
19 address is in fact the residence of a "Patrick J. Panzarella," as Defendants argue. *See*  
20 <http://www.zabasearch.com> (last visited Sept. 1, 2010). Defendant STI is a Nevada corporation  
21 with its only offices in California, and Defendant Macaluso resides in California, (*see* Macaluso  
22 Decl. ¶¶ 2–3, ECF No. 5), making both Defendants citizens of California, *see* 28 U.S.C.  
23 § 1332(a)(1), (c)(1); *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010) (holding that the  
24 principal place of business of a corporation under § 1332(c)(1) is its headquarters or "nerve  
25 center"). Because *all* parties are citizens of California, not only is there no jurisdiction under

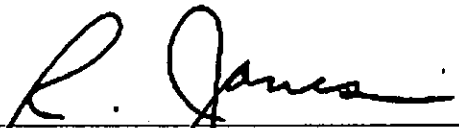
1 § 1332(a), Congress does not even have the ability to create federal jurisdiction over this case.  
2 See U.S. Const. art. III, § 2, cl. 1; *Tashire*, 386 U.S. at 530–31. There being no diversity between  
3 the parties and no federal claims, the Court dismisses the case for lack of subject matter  
4 jurisdiction.

5 **CONCLUSION**

6 IT IS HEREBY ORDERED that the Motion to Dismiss for Lack of Jurisdiction (ECF No.  
7 4) is GRANTED.

8 IT IS SO ORDERED.

9 Dated: December 29, 2010

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13 ROBERT C. JONES  
14 United States District Judge  
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